Taxation Act 1945 - Precautionary Seizing of Messrs Sha Premchand Nemichand & Co Bundin, Mangalore — Applicability of the Act - Notice under Section 80 of the Civil Procedure Code.

Sectt. 11-27—104,036—4-11-45.

M. Dev **(195/) Department.**

Legis **SERIES.**

para 1(b)

G.O. NO. 59531 Pl 57-3

10 X 57

Dated

Ref. 571 Dev of 1625
1051 Dev of 1335
Dm 2788 Dev 9375

Office of the Chief Inspector of Factories, Chepauk, M a d r a s.

From
Sri C.G.Reddi, B.Sc. (Tech.)
A.M.C.T., M.I.E. (India.)
Commissioner of Labour, and
Chief Inspector of Factories,
Chepauk, M a d r a s.

To

The Secretary to Government,
Development Department,
Fort St. George,
M a d r a s.

ADDITIONAL ASSISTANT SECRETARY
29 MAY 1951

No. B.1.19748/51 dated 25-5-1951.

59531/29/5

Sir,

Sub: Factories Act, 1948--Arecanut factory of Messrs. Sha Prabhulal Nemichand & Co., Bunder, Mangalore--Applicability of the Act--Notice under Section 80 of the Civil Procedure Code.

Ref: Petition dated 29-4-51 from Messrs. Prabhulal Nemichand & Co., Bunder, Mangalore received from the Collector of South Kanara.

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I send herewith the above petition in original. The Occupier of the factory sent an appeal petition dated 14-1-1951 before, against the registration of his factory under the Factories Act, 1948. The case was enquired into and the appellant was informed that his premises would be covered by the Factories Act, 1948 as garbling sorting etc. of arecanuts were carried on in his factory which are manufacturing processes within the meaning of the Factories Act and more than 9 persons were employed in this factory.

p.t.o.

The petitioner has not taken out the necessary license required under the Madras Factories Rules, 1950, for the year, 1950, and sanction was accorded to prosecute the manager of this factory for running the factory without the license.

The issue was examined before and a report was sent to Government in my letter No.B.1. 8171/51 dated 20-3-1951 and B.I. 23040/50 dated 20-3-51

The threatened suit of the Proprietor against the Government for a declaration that his premises would not constitute a factory, may be awaited.

Jar. 26-5.

for Commissioner of Labour, and
Chief Inspector of Factories.

D.R. No. 19

Dated 29th April, 1951.

From

Messrs Sha Prabhulal Nemichand & Co,
Merchants,
Bunder, Mangalore.

To

The State of Madras, represented by the
Collector of South Kanara. Mangalore.

Notice under Section 80 of C.P.Code.

Sir,

The Additional Inspector of Factories, Circle I, Mangalore, by notice dated 22-12-1950 served on us on 27-12-1950, has informed us that our premises known as " Sha Prabhulal Nemichand & Co " has been registered as a Factory under the Factories Act, 1948. Against the said order we filed an appeal to the Chief Inspector of Factories, Madras, by petition dated 14-1-1951 contending therein that no manufacturing process is carried on in our premises and as such the said premises do not constitute a Factory. The Chief Inspector without giving us an opportunity to be heard rejected our appeal by order dated 12-3-1951 without assigning any reasons for holding that our premises constitute a Factory. The order further directed us to take out licences for the years 1950 and 1951. Under Section 107 of the Factories Act the appellate authority is bound to hear ~~the appeal with the aid of assessors~~ and the order passed arbitrarily is illegal.

We are not carrying on any " manufacturing process" but only dealing in arecanuts. We purchase arecanuts in the Mangalore market and dispatch the same to Bombay and other marketing centres. Before marketing the nuts are sorted or graded according to size and the inferior quality nuts known as koka' are picked

out and seperated. Before grading the arecanuts filled in bags are kept in a fumigation room for the purpose of killing insects and worms. On account of fumigation or grading the arecanuts do not undergo any alteration. In order to constitute manufacture there must be a transformation of the article. Fumigation and grading of Agricultural produce at the stage of marketing does not constitute a process of manufacture and therefore the Factories Act is not applicable to us and the Inspector of Factories has no jurisdiction to treat our premises as a Factory.

With a view to coerce us to take out a licence and observe the factory laws the Inspector of Factories, Mangalore, has filed a Criminal complaint against us in C.C.No. 304/1951 before the Sub Divisional Magistrate, Mangalore for not taking out a licence for 1950. The order directing us to take out a licence for 1950 in any view of the case is illegal. The order of the Additional Inspector was served on us on 27-12-1950 and the order of the appellate authority was communicated to us in March, 1951 and as such it was impossible to take out a licence for 1950 after the year was over. The Chief Inspector has no powers under the Act to direct any party to take out a licence for the previous years.

In the circumstances stated above we are compelled to sue the Government of Madras for a declaration that our premises do not constitute a Factory and to set aside the order of the Chief Inspector of Factories, Madras, dated 12-3-1951.

Yours faithfully,

પ્રા. નમીચંદ વાઘજી.

(Sha Nemichand Vaghji)
Proprietor
M/s Prabhulal Nemichand & Co.

Dev's Dept (P)

Pl. mem VE Section
by
26/6

Memo. No. 5951 Pii /57-2 dt 26-6-1957.

Subj:- Act - Factories Act, 1948 - Area and manufactory of M/s Shah Prabhulal Nemichand & Co., Merchants, Bunders, Mangalore - Applicability of the Act etc - Suit notice under Section 80 of the C.P.C.

fp 3-4 cf

Ref:- From Shri Shah Nemichand Waghji, Proprietor, Shah Prabhulal Nemichand and Co., Merchants, Bunders, Mangalore, Suit notice D 29-4-1957.

Shri Shah Nemichand Waghji is informed that the matter is being looked into by the Govt. and that a final reply will be sent as early as possible.

pl. fp 2 nf.

Sri Shah Nemichand Shah, Proprietor (D.T.O).

25.6.57.

25/6/57.

25/6

~~76~~ 65

M/S. Shah Parshotam
Nemichand & Co;
Merchants, Bombay.
Manufacturers.

Copy to C. I. F. Calcutta
Sent to the B 1.19748/57
dt 25-5-57

B.P 1-2 4

Dr M 22/6

7 Deusk

19
19/10
Reminder 19/10/51

Letter No. 59531 P II/51-32 (8 x 51)

To Sri Sha Prabhulal Nemichand & Co
Merchants, Bundr, Mangalore

Sub: Factories Act, 1948 - notice under section 6A of the Civil Procedure Code -

Ref: Your notice dt 29.4.51 to the Collector of South Kanara, Mangalore.

I am directed to refer to the letter cited which has been forwarded to this Govt. by the Inspector of Factories and to say that this Govt. are advised that the process of grading arecanuts carried on in your premises constitutes a manufacturing process

5

as defined in section 2(k) of the factories Act, 1948. and that the Factories Act, 1948 will apply to your premises. The provisions of the Act should therefore, be complied with in respect of your factory.

16/5/1

18/5

Copy to the C.I.F
w.r.n. B.I. 19764/57
Rs 25 pd
1.2.64

Compd
19/2

C 59531/P.II/57

9 Dev P II

Sub: Act - Factories Act, 1948 - Arecanut factory of M/s Sha Prabhulal Nemichand & Co., Mangalore - Applicability of the Act etc - Suit notice under section 80 of the C.P.C -

pp 3-4 cf Ref: Suit notice from Sh Prabhulal Nemichand & Co.

pp 1-2 cf From the C.I.F No. B.1.19748/51 D 28-4-57
To A.S

Please see the petition on pp 3-4 cf and the remark of the C.I.F on pp 1-2 cf. The petition on pp 3-4 cf is purported to be a notice to Govt under section 80 of the C.P.C. threatening to sue the Govt for a declaration that the premises of the petitioner do not constitute a factory. The petitioner has already appealed to C.I.F but without success.

pt cf 2. The C.I.F. has stated that on an appeal petition from the petitioner, the case was enquired into and the appellant was informed that his premises would be covered by the Factories Act 1948 as garbling, sorting etc of arecanuts carried on in the Factories of the appellant are "manufacturing process" within the meaning of the Factories Act and more than 9 persons are employed in the factory. The C.I.F. pt cf. has suggested that the threatened suit may be awaited.

3. The question whether the processes carried on in arecanut factories will constitute "manufacturing process" as defined in the Act was examined in consultation with the Legal Dept at the instance of similar suit notice given by another arecanut merchant and it was held that they do constitute "manufacturing process" as defined in the Act. In the meantime U/S of D in the Ministry of Law have now opined that the grading arecanut in factories by itself does not constitute a manufacturing process. As the opinion of the Govt of India was based on the view that the arecanuts are in no way heated, refined or changed it is proposed to explain to them that the processes in these factories involve fumigation, clearing and blanching etc. Before the

K

Before the Govt of India is addressed, the C of I. is has been asked to state specifically whether the processes referred to have the effect of ~~[illegible]~~ the articles a little different from what they were as before. It is for consideration whether the recommendation of the C of I. that the threatened suit may be ~~[illegible]~~ may be accepted and the party informed accordingly.

Legal may see.

Legal Department

This is a case in which it is better not to await the filing of the threatened suit. It is seen from the letter of the Commissioner of Labour at p.33 c.f. of L.F II, that all that is done in respect of arecanuts is to clean and sort them out. In the light of the opinion of the Ministry of Law at 'K' p.23 c.f. of L.F II, it cannot be said that the contention of the person who has given notice is wholly without substance. In L.F II, it is proposed to address Government of India again on the matter. We may therefore inform the person who has given the notice that the matter is being looked into by Government and that a final reply will be sent as early as possible.

Notes of Legal ~~[illegible]~~ above may be forwarded. A draft memo to the party is submitted for approval.

Notes

Please see the notes from pl above.
w.r.to K on p 1 above, the Govt. of India have since written to say that "the process of grading arecanuts and cardamom amounts to 'treating and packing' and that it will, therefore 'constitute a manufacturing process' as defined in the Factories Act, 1948. In view of this opinion, a reply containing as at A above was sent to three other merchants of Mangalore who had framed notices to Govt. under Section 80 C.P.C. for similar circumstances. [Letter no 131730 P II 150-8 dt 26.9.57.] Legal Dept have also seen that case before a reply was sent. It seems a similar reply may also be sent to this merchant also. Subject to orders a draft letter is submitted for approval

pl see A on p4 ante (V) A

p35 ante (V)

p6 ante (VI)

15/20 16/+/57